

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA

SHANE FRYE,
On behalf of himself and
All others similarly situated,

Plaintiffs,

v.

Civil Action No.: 2:16-cv-06007
Circuit Court No.: 16-C-68

THORNHILL AUTOMOTIVE, INC.,
THORNHILL GROUP, INC.,
THORNHILL, LLC, AND
JOHN DOE,

Defendants.

NOTICE OF REMOVAL

NOW COME the Defendant, Thornhill Automotive, Inc. by and through their counsel, Johnnie E. Brown , and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, and pursuant to 28 U.S.C. § 1332, 1441, and 1446, said Defendant hereby gives notice that, on the grounds set forth below, they are removing the above styled action from the Circuit Court of Mingo County, West Virginia to the United States District Court for the Southern District of West Virginia. In support thereof, the Defendant states and avers as follows:

1. This civil action was commenced by Plaintiff, Shane Frye, on behalf of himself and all others similarly situated, against the Defendants, Thornhill Automotive, Inc. and Thornhill Group, Inc. and Thornhill, LLC, on or about April 14, 2016. Plaintiff filed his Complaint in the Circuit Court of Mingo County, West Virginia. The matter was designated Civil Action 16-C-68 by the Circuit Court of Mingo County. *See Plaintiff's Complaint* attached hereto as **Exhibit 1**.

2. Service upon the Defendant, Thornhill Automotive, Inc. was made via West Virginia Secretary of State on June 3, 2016. See *Summons* attached hereto as **Exhibit 2**. See *Proof of Service from West Virginia Secretary of State* attached hereto as **Exhibit 3**. Service has not been perfected on any other defendant.

3. In accordance with 28 U.S.C. § 1446(a), this defendant states that the only process, pleadings, or orders in this matter are the summons and complaint. See **Exhibit 1**; **Exhibit 2**; and Docket Sheet attached hereto as **Exhibit 4**.

4. This Notice of Removal is being filed within (30) days after the Defendant was served with a Complaint which is removable to the United States District Court for the Southern District of West Virginia, at Charleston.

5. According to his Complaint, Plaintiff has asserted four causes of action: (a) violation of the Americans with Disabilities Act; (b) violation of the West Virginia Human Rights Act; (c) violation of public policy; and (d) breach of implied contract.

6. According to 28 U.S.C. § 1331, “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

7. The following claim of the Plaintiff arises under the laws of the United States: to wit, violation of the Americans with Disabilities Act.

8. According to 28 U.S.C. § 1441(c), “If a civil action includes **(A)** a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and **(B)** a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made nonremovable by statute, the entire action may be removed if

the action would be removable without the inclusion of the claim described in subparagraph (B).”

9. Pursuant to 28 U.S.C. § 1441(c), removal is proper as the Plaintiff’s civil action arises under the laws of the United States, i.e., the Americans with Disabilities Act, and the Plaintiff’s claims are not claims that have been made nonremovable by statute.

10. Pursuant to 28 U.S.C. § 1441(a), any civil action brought in a State of which the district courts of the United States have jurisdiction may be removed by the Defendants(s) to the district court of the United States for the district and division embracing where such action is pending.

11. That pursuant to 28 U.S.C. § 1391, venue is proper in the Southern District of West Virginia because a substantial part of the events or omissions giving rise to the claims contained in the Complaint allegedly occurred in this district.

12. Removal of this action to this Court is also proper pursuant to 28 U.S.C. § 1446(b)(2)(A) as all Defendants have consented to removal. Specifically, undersigned counsel represents Thornhill Automotive, Inc., who consents. Thornhill Group, Inc. and Thornhill, LLC has not been served, but undersigned counsel has received permission from Thornhill Group, Inc, and Thornhill, LLC’s representative to remove to this Honorable Court. A “Consent to Removal” is attached hereto for Thornhill, LLC and Thornhill Group, Inc., as **Exhibit 5** and **Exhibit 6**, respectively. Thornhill, LLC is an unrelated entity from Thornhill Automotive, Inc. Thornhill Group, Inc, and Thornhill, LLC have not been served with a copy of the complaint.

13. Pursuant to 28 U.S.C. § 1446(d) Thornhill Automotive, Inc., is concurrently serving on Plaintiff and also filing in the Circuit Court of Mingo County, West Virginia, a “Notice of Filing of Notice of Removal” a copy of which is attached hereto as **Exhibit 7**.

14. That the removal of the above-captioned civil action from the Circuit Court of Mingo County to the United States District Court for the Southern District of West Virginia, at Charleston, is proper.

WHEREFORE, the Defendant, Thornhill Automotive, Inc., prays that the service and the filing in this Honorable Court of this Notice of Removal, and also the service upon the Plaintiff and the filing in the Circuit Court of Mingo County, West Virginia, a “Notice of Filing of Notice of Removal” (which includes an attached copy of this Notice of Removal) shall effect the removal of this action from the Circuit Court of Mingo County, West Virginia, to the United States District Court for the Southern District of West Virginia.

Dated: July 5, 2016

THORNHILL AUTOMOTIVE, INC.,

By Counsel,

/s/ *Johnnie E. Brown*

Johnnie E. Brown, WV State Bar No. 4620

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CERTIFICATE OF SERVICE

The undersigned, counsel of record for Defendants, Thornhill Automotive, Inc., does hereby certify on this 5th day of July, 2016, that a true copy of the foregoing "*Notice of Removal*" served upon opposing counsel by electronically filing the same with the Clerk of the Court using CM/ECF system, which will send notification of such filing to:

D. Adrian Hoosier, II
Lord Hoosier PLLC
225 Hale St.
Charleston, West Virginia 25301
Counsel for Plaintiff

The undersigned, does hereby certify that is served the following non-CM/ECF participants via U.S. Mail:

Herbert Jonkers, Manager
Thornhill, LLC
1438 Layman Street
McLean, VA 22101

/s/ *Johnnie E. Brown*

Johnnie E. Brown, WV State Bar No. 4620

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